

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID CLARK, et al.,

*Plaintiffs,*

v.

DUKE UNIVERSITY, et al.,

*Defendants.*

Civil Action No. 16-1044-CCE-LPA

**MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Under Fed.R.Civ.P. 15(a)(2), Plaintiffs seek leave to file a Second Amended Complaint that adds additional individual members of the Investment Advisor Committee and provides further factual support and detail of the fiduciary breaches and prohibited transactions to the existing allegations against the current Defendants.<sup>1</sup> Granting Plaintiffs' motion will not prejudice Defendants. The deadline for the parties to amend the pleadings to add claims or to add parties is December 1, 2017. Doc. 62. No new counts have been added against the current Defendants who previously answered the Amended Complaint. None of the factors enumerated in *Foman v. Davis*, 371 U.S. 178, 182 (1962) are present that would deviate from the liberal standard in Rule 15(a)(2) that amendments be "freely" granted. See also *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006).

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<sup>1</sup> On December 1, 2017 Plaintiffs informed, via email, Defendants that they intended to amend their complaint. Plaintiffs informed Defendants that the amendment will seek to add more detail and that no new counts would be added. Plaintiffs were unable to provide an advance draft of the proposed amended complaint to Defendants. Plaintiffs will promptly notify the Court if Defendants consent to this motion for leave to amend.

For these reasons, and those set forth in Plaintiffs' Memorandum in Support filed concurrently herewith, Plaintiffs respectfully request that the Court accept Plaintiffs' Second Amended Complaint attached hereto as Exhibit 1.

December 1, 2017

Respectfully submitted,

/s/ Jerry Schlichter

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### **CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 2017, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send e-notification of such filing to the attorneys of record.

/s/ Jerry Schlichter